

PAPERS

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IN reference to the claim of the Province of New Brunswick against the Dominion Government in connection with the Eastern Extension Railway. Also the award of the arbitrators.

EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on February 17, 1900.

On a memorandum dated February 16, 1900, from the President of the Privy Council, submitting that the Province of New Brunswick has for many years continuously preferred a claim against the Dominion Government for moneys alleged to be justly due and owing the province as interest on moneys paid by the Dominion Government arising out of the construction of that portion of the Intercolonial Railway formerly known as the Eastern Extension Railway.

The Minister states that it is desirable such claim should be inquired into and adjusted, and to that end that a reference should be made to arbitration, and for such purpose, it has been agreed, subject to the approval of Your Excellency in Council, that a reference of said claim be made to the following persons as arbitrators, mutually agreed upon by the Government of the Province of New Brunswick and the Dominion Government, namely: Honourable Mr. Justice Frederick Eustace Barker, of the Supreme Court of New Brunswick; Honourable Mr. Justice François Charles Stanislaus Langelier, of the Superior Court of Quebec; Duncan Coulson, Esquire, of Toronto, General Manager of the Bank of Toronto.

That such arbitrators be empowered to make full inquiry, ascertain and report the facts and circumstances in respect of said claim, and their opinion as to what would be a just and equitable disposition thereof, and what sum, if any, is justly and equitably due and payable by the Dominion Government to the said province in respect of said claim.

That, as was provided by Act of Parliament, 54-55 Victoria, chapter 6, section 6, in respect of the settlement of disputed accounts between the Dominion and the Provinces of Ontario and Quebec, the said arbitrators, in making their award, shall not be bound to decide according to the strict rules of law or evidence, but may decide upon equitable principles;

That any two of the said arbitrators shall have power to make an award, which award shall be made in writing, and the expenses of the said arbitrators under the said arbitration, shall be in the discretion of the arbitrators.

The Minister therefore recommends that it be ordered that the said claim be referred to arbitration as aforesaid, and that the Honourable Frederick Eustace Barker, the Honourable François Charles Stanislaus Langelier and Duncan Coulson, Esquire, be appointed to make such inquiry and report.

The Committee submit the foregoing recommendation for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

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OTTAWA, October 27, 1900.

Hon. R. W. SCOTT,
Secretary of State.

We have the honour of transmitting to you herewith our award in the matter of the Eastern Extension Railway referred to us by Order in Council and concurred in by the Government of New Brunswick.

FRED E. BARKER,
F. LANGELIER,
D. COULSON.

To His Excellency the Governor General and Government of Canada,

The Lieutenant Governor and Government of the Province of New Brunswick,

And all to whom these presents shall come, we, the Honourable Frederick Eustace Barker, Judge of the Supreme Court of New Brunswick, the Honourable François Charles Stanislaus Langelier, Judge of the Superior Court of Quebec, and Duncan Coulson, Esquire, of Toronto, General Manager of the Bank of Toronto, send greeting :

Whereas for many years past differences have existed between the said two Governments in references to a claim preferred by the Government of New Brunswick against the Government of Canada for moneys alleged to be justly due and owing to the Province, arising out of the construction of that portion of the Intercolonial Railway formerly known as the Eastern Extension Railway and extending from Painsec Junction eastward to the boundary line between the Province of New Brunswick and Nova Scotia, a distance of $37\frac{1}{2}$ miles.

And whereas by an order of the Honourable the Privy Council of Canada approved by His Excellency on February 14, 1900, it was ordered and alleged as follows :—

‘On a memorandum dated February 13, 1900, from the President of the Privy Council, submitting that the Province of New Brunswick has for many years continuously preferred a claim against the Dominion Government for moneys alleged to be justly due and owing the province as interest on moneys paid by the Dominion Government arising out of the construction of that portion of the Intercolonial Railway formerly known as the Eastern Extension Railway.

‘The Minister states that it is desirable such claim should be inquired into and adjusted, and to that end that a reference should be made to arbitration ; and for such purpose it has been agreed, subject to the approval of Your Excellency in Council, that a reference of the said claim be made to the following persons as arbitrators, mutually agreed upon by the Government of the Province of New Brunswick and the Dominion Government, namely: Honourable Mr. Justice Frederick Eustace Barker, of the Supreme Court of New Brunswick ; Honourable Mr. Justice François Charles Stanislaus Langelier, of the Supreme Court of Quebec ; Duncan Coulson, Esquire, of Toronto, General Manager of the Bank of Toronto.

‘That such arbitrators be empowered to make full inquiry, ascertain and report the facts and circumstances in respect of the said claim, and their opinion as to what would be a just and equitable disposition thereof and what sum, if any, is justly and equitably due and payable by the Dominion Government to the said Province in respect of the said claim ; that, as was provided by Act of Parliament 54-55 Victoria, chapter, 6, section 6, in respect of the settlement of disputed accounts between the Dominion and the Provinces of Ontario and Quebec, the said arbitrators, in making their award, shall not be bound to decide according to the strict rules of law or evidence, but may decide upon equitable principles.

‘That any two of the said arbitrators shall have power to make an award, which award shall be made in writing, and the expenses of the said arbitrators, under the said arbitration shall be in the discretion of the arbitrators.

‘The Minister, therefore, recommends that it be ordered that the said claim be referred to arbitration as aforesaid, and that the Honourable Frederick Eustace Barker,

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the Honourable François Charles Stanislaus Langelier, and Duncan Coulson, Esquire, be appointed to make such inquiry and report.'

And whereas the Government of the said Province of New Brunswick concurred in the said reference.

And whereas we, the said arbitrators took upon ourselves the burthen of the said reference and on the hearing of the matters alleged on both sides we have been attended by counsel on behalf of the Government of Canada and by counsel on behalf of the Province of New Brunswick, and after hearing all that was alleged and duly considering all the evidence produced before us, and making full inquiry, we do hereby report the facts and circumstances in respect of the said claim as ascertained by us, and our opinion as to what would be a just and equitable disposition thereof, and the sum which is justly and equitably due and payable by the Dominion Government to the said province in respect of the said claim.

We find and report that the section of railway in question in or about the year 1869 was taken over by the Government of Canada and adopted as part of the Inter-colonial Railway; the Government paying for the road the sum of \$894,000; of which \$250,000 was carried to the credit of the province on Debt Account, and the balance was paid to the contractors who had constructed the road under contract with the Government of New Brunswick. That up to the time the road was so taken over, the Government of New Brunswick had paid through the Dominion Government subsidy for the construction of the road, \$400,000, and there was therefore a balance of \$150,000 of this total expenditure by the province unpaid to them at that time.

That the sum of \$894,000 was much less than the amount which the road had actually cost, but that sum appears to have been arrived at by taking as a basis the estimated cost of what were considered similar sections on other portions of the Inter-colonial Railway.

That at various times between 1869 and 1884 the Government of the province claimed from the Dominion Government to be reimbursed in full for the outlay which the province had made and of which the Dominion was getting the benefit; and accordingly the Canadian Government directed a further investigation of the cost of the road to be made by their own engineer, from whose report it appears that the estimated cost which formed the basis of the original payment of \$894,000 was altogether too low.

That in 1884 the Government of Canada under these facts as to the cost and value of the road as then determined by their engineer, obtained from Parliament a vote of \$150,000; 'to reimburse the Government of New Brunswick for money expended by them in the construction of this section of railway,' and under the authority of that vote the sum of \$150,000 was on the 1st of July, 1884 carried to the credit of the province on debt account.

That previous to 1884 the Government of the province not only claimed to be reimbursed this sum of \$150,000, but in addition the various amounts which they would have obtained semi-annually as interest on that sum if it had been carried to the credit of the province in 1869, when they contended it should have been; and it is for these sums so retained and interest thereon since 1869 that the present claim is made.

We find and report that the contention made on the part of the Dominion, that the sum of \$150,000 voted in 1884 was in full of all claims by the province in connection with this road, is not sustained by the evidence, but that the facts and circumstances are altogether the other way.

We the said arbitrators having duly considered all the matters upon equitable principles do award and determine as our opinion that it would be a just and equitable disposition of the claim, that the Dominion Government should pay to the Province of New Brunswick the various semi-annual payments of \$3,750 to which it would have been entitled if this \$150,000 has been carried to the credit of the province in 1869 instead of 1884, as we think it equitably should have been; together with interest at five per cent on these several semi-annual payments from the time they would have been payable up to the 1st of July, 1884, when the \$150,000 was credited. This sum we find to amount to \$145,218.75 and we also award and state as our opinion that on

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this sum the province is entitled to be paid by the Dominion Government interest at the rate of five per cent per annum until paid; and we fix and allow our expenses as such arbitrators, under the authority for that purpose in the said reference, at \$5,100 which sum we direct the Government of New Brunswick to pay and that the Dominion Government repay them the sum so paid for expenses.

In witness whereof we have hereto set our hands in duplicate at Ottawa, this twenty-seventh day of October, A.D. 1900.

FRED. E. BARKER,
F. LANGELIER,
D. COULSON.

To His Excellency the Governor General and Government of Canada, and the Lieutenant Governor and Government of the Province of New Brunswick.

The undersigned who were appointed arbitrators by the Governments of Canada and New Brunswick in reference to a claim preferred by the Provincial Government for moneys alleged to be justly due and owing to that province on account of the construction of that portion of the Intercolonial Railway formerly known as the Eastern Extension Railway, desire to present this statement as supplementary to their award made and delivered on the twenty-seventh day of October last.

The attention of the undersigned was called to the fact that in the computation of the amount awarded the six months' interest from 1st January, 1884, to July 1st of that year, amounting to \$3,750 had been omitted, apparently by a mistake in calculation by the arbitrators, and that as a result the amount fixed by the arbitrators as due on the 1st July, 1884, was less by \$3,750 than it should have been. The undersigned desire to state that this sum was omitted from the amount awarded by them intentionally, but in consequence of an impression that the \$3,750 had been actually paid to the province. The Provincial Government, however, assure us that such is not the case, and therefore the sum should not have been excluded in the computation.

The undersigned find and desire hereby to communicate to the two Governments that if the sum in question was not really paid the province in 1884 as the arbitrators supposed, the amount awarded by us as due on the 1st July of that year (\$145,218.75) should, under the principle upon which the liability was determined, be increased by the sum of \$3,750, which sum so increased would bear interest as fixed by the award.

Ottawa, April 1st, 1901.

FRED. E. BARKER,
F. LANGELIER,
D. COULSON.